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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1965

No. 1042

JULIAN G. CARR

Petitioner

vs.

THE UNITED STATES

Respondent

Motion For Rehearing on Petition for Writ of Certiorari to the Court of Claims of the United States

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HENRY R. CARR
1440 N. W. 14th Avenue,
Miami, Florida
Counsel for Petitioner

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Petitioner cannot believe that his cause has been made clear to this Court. He was denied below on abstract questions since explained away and no longer in issue. It is now agreed that "— *the only issue presented is the narrow one of the effective date of the Career Compensation Act, a matter of little prospective application or importance*—".[1] He is unaware of degrees in retroactivity or that an act might be acceptable which is only a little retroactive, and only wrongs a single individual.

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[1]Page 3, government's memorandum in answer to petition for writ of certiorari.

Petitioner has not objected to Amendatory Section 415 because it is harsh and oppressive, or because it is patently unjust and discriminatory. Congress most surely has power to write such an act. As the only known member of the military services to ever suffer retroactively under a public law, he prays in his final appeal, that this Court will consider the entire Act. He respectfully submits that Amendatory Section 415 *cannot reflect the true Congressional Purpose.* Every effort has been made to not waste this Court's time.

The "effective date" of the Act in question is a time carefully removed, and one distinctly set apart from "the date of enactment". The principal function of the statute was to provide new pay increases exceeding an annual 300 million dollars, and Congress knew from the bill's inception that these new benefits must have an "effective date" on the *first of a month. This is always essential for budget and fiscal demands.*

Calendar dates were unknown during the two years while the bill was under preparation, but every joint reference in the body of the Act *compels* the "effective date" to *follow* "the date of enactment". Congress had believed that normal procedure would be observed; that the bill would first be enacted into law and that the new *increases would later start,* and have an "effective date" *on the first of a future month.*

In the closing instructions of Section 533, *Congress suddenly reversed the order of the "effective date" in its former relation to "the date of enactment", and "October 1, 1949" served no purpose other than to hasten the start*

of unaccrued pay and to benefit every member of the military services. If a term is to have a constant meaning, *the retroactive date of "October 1, 1949" cannot thereafter replace the statutory reference to an "effective date", which when written, was intended to be prospective and follow "the date of enactment".*

The saving clauses make no less than *fifteen* references to "the date of enactment", *a prospective date* that protected every existing or prior law *until midnight on "October 12, 1949", the day of the Act's approval.*

Admitted confusion in the USC is identical to the construction under protest:

> 63 Stat., 831. Sec. 515(b) states in part:
>
> "Any member who, on the effective date of this Act, is serving in an enlistment contracted prior to the date of enactment of this Act, or any member whose entitlement terminated in the period between the date of enactment and the effective date of this Act, both dates inclusive — "
>
> Translation in USC Title 37, 315(b)
>
> "Any member who, on October 1, 1949, is serving in an enlistment contracted prior to October 12, 1949 (or any member who today is serving in an enlistment contracted prior to next week) or any member whose entitlement terminated in the period between *October 12, 1949, and October 12, 1949, both dates inclusive—".*

A footnote to the latter error states:

"So in original. *Probably* should read 'October 12, 1949 and October 1, 1949' ".

This is *not* "So in original". The error shown above and the inept language of Amendatory Section 415, have stemmed from the same cursory attention to Section 533 wherein "October 1, 1949" is unavoidably restricted to "pay, allowances or benefits", and every "pay entitlement"—"pursuant to any provision of law" is saved until "the date of enactment" or October 12, 1949, a date then unknown:

From Section 533 — last chapter of Act—

"(a) *Except* as provided in subsections (b) and (c) of this section, this Act shall take effect on October 1, 1949, *and no pay allowances or benefits provided herein shall accrue to any person for any period prior thereto.*

"(b) *Section 515 of this Act shall become effective on the date of enactment of this Act*".

"GENERAL SAVING SUBSECTION 515(a)" (legislative historical title) is "A PROVISION TO RETAIN PRESENT COMPENSATION". By express order it becomes effective on "the date of enactment":

Statutes 63, 831, Section 515(a)

"No member serving on active duty—shall—suf-

fer any reduction by reason of this Act in the total compensation which he is entitled to receive under any provision of law—provided—the provisions of this subsection shall cease to apply—"

The preceding clause embraces the whole Act, and confirms the explicit text of two saving clauses which follow. The disturbance of all antecedent laws is prohibited prior to "October 12, 1949".

"Saving Section 519, 63 Stat. 834.

"Title 37, USC, Section 318:

"SAVING PROVISION RELATING TO MEMBERS AND FORMER MEMBERS RECEIVING RETIREMENT PAY ON *OCTOBER 12, 1949*

"Any member or former member of the uniformed services—who on *October 12, 1949*, is receiving or entitled to receive retired or retirement pay *pursuant to any provision of law, shall, not withstanding the provisions of this chapter*, be entitled to continue to receive or shall continue his entitlement to receive that retired or retirement pay which such member or former member is entitled to receive under any provision of law in effect on the day preceding *October 12, 1949*". Emphasis added

"Saving Section 520, 63 Stat.

"Title 37, USC, Section 319:

"SAVING PROVISION RELATING TO LAWS PROVIDING FOR PAY *REPEALED* BY THIS CHAPTER.

"Any provision of law which, on *October 12, 1949* entitles any person to be retired, to receive pay, retired pay, retirement pay, or retainer pay, or other monetary benefits, and which is directly repealed, impliedly repealed, or amended by the provisions of this chapter, *shall, if the entitlement of such person to such — is saved by the provisions of this chapter, be continued in full force and effect for such entitlement and for such a time as such entitlement may exist*". Emphasis added

Section 415 preserved a law in effect since 1861 that gave an automatic 75 percent pay to every commissioned officer who was retired from physical disability. It cannot be read with meaning or coherence unless the reference to the "effective date" indicates a time following "the date of enactment"—both prospective dates. The verb tenses and sentence structure *compel* this meaning, and it will be noted that the present tense "*is*", attends the "effective date"—"growing out of the injury or disease for which he *was* hospitalized as of the date of enactment of this Act". *Congress made no distinction between officers who shared an identical status on October 12, 1949.*

"63 Stat. 825; Sec. 415.

"Any member who, on the *effective date* of this Act, *is* a hospital patient and who within six months of the effective date of this Act is retired as a result of a physical disability *growing out of the injury or disease for which* he *was* hospitalized as of *the date of enactment of this Act*, may elect to receive retirement benefits computed under the laws in effect on *the date preceding the date of enactment of this Act.*" Emphasis supplied.

The legislative history, always avoided by the government, has jointly discussed Section 415 and the Amendment. Its plain text has been completely disregarded: (U. S. Code Cong. Service, 1950, P.2296)

"Section 415 of the Career Compensation Act provided a period of *six months, following the date of enactment*, during which members of the uniformed services who were hospital patients *on the date of enactment* had the right to elect retirement benefits computed in accordance with laws in existence *prior to the Career Compensation Act*, if such members were retired for physical disability *during the six months immediately following the date of enactment.*

"Due to the fact that regulations by other sections of Title IV of the Career Compensation Act *were not promulgated until after the six-month period had expired*, particularly insofar as they

pertain to the payment of retired pay to non-regular personnel, *such persons were not able to exercise their election prior to the expiration date.* "The proposed legislation, therefore, would *extend the election date to December 31, 1950,* but would not create any other new rights or benefits and, in all probability, will not enlarge the number of personnel entitled to right of election."

On September 26, 1949, the late Senator Hugh Butler, upon introduction of the amendment which was to become the original Section 415, stated in part:

> "The purpose—is to give an officer—an opportunity to make his final settlement either under the terms of the *present law* [the old law] or under the terms of the new act." (Cong. Rec. Vol. 95, Part 10, P. 13259)

On September 27, 1949, President Johnson, then a Representative, stated before the House:

> "It was wise for us to accept the Senate amendments, so the bill may become a law on October 1, 1949, *the date fixed in the bill for the increases to take effect.*" (Cong. Rec. 1st Session, 81st Congress, p. 13259, Vol. 95, Part 10.)

The disparity between petitioner's injury and his 30 percent compensation is not relevant to the issue. He was hospitalized prior to the Act's approval, *on October 10, 1949* and his survival in great question for days thereafter.

With "total" and "permanent" disability, he was denied an election under the old law and retired on June 30, 1950, and under strict and isolated adherence to the letter of Amendatory Section 415.

"Amendatory Section 415, 37 USC 285

"HOSPITAL PATIENTS ON *OCT. 1, 1949* who SUBSEQUENTLY RETIRE; *ELECTION OF BENEFITS*

"Any member who, on October 1, 1949, was a hospital patient and who, prior to January 1, 1951, is retired as the result of a physical disability growing out of the injury or disease for which he was hospitalized, may elect to receive retirement benefits computed under the laws in effect on September 30, 1949."

The foregoing Amendment has no meaning outside its own text. It ignores two references in Section 415 to "the date of enactment" and in violation to the most forcible and constant opinions known to the law, it has construed a statute for the past, "October 1, 1949", while making a rule for the future, "January 1, 1951".

Saving Section 519 forbids the disturbance of any existing law prior to "October 12, 1949". Saving Section 520 has no purpose other than to assure *the prospective and vested nature of this very claim;* it prohibits the disturbance of any law which had been saved from repeal on "October 12, 1949". Saving Section 515(a) forbids all retroactive loss under the Act.

Every related word of the Act, its history and the Congressional Record have observed the strict rules of law against retroactive intent. Amendatory Section 415 generously extended for nine months into the future, an old law that was generously saved from repeal on "October 12, 1949". It could not have been repealed earlier than this date on which the Act was approved.

Petitioner prays that the conflicts will be reconciled against the retroactive Amendatory Act, and in favor of the prospective instructions of the Career Compensation Act; that this motion for rehearing on his petition for writ of certiorari will be granted by this Honorable Court.[2]

Respectfully submitted,

Henry R. Carr

HENRY R. CARR
1440 N.W. 14th Avenue
Miami, Florida
Counsel for Petitioner

CERTIFICATE

I hereby certify that the foregoing petition for rehearing is presented in good faith, and not for delay; that said petition is restricted to the grounds above specified.

Henry R. Carr

HENRY R. CARR
Counsel for Petitioner

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[2]A reproduction of the Court's decision has been reproduced in the Appendix.

APPENDIX

In the United States Court of Claims

No. 142-64

JULIAN G. CARR

v.

UNITED STATES

Order

This case comes before the court on defendant's motion and plaintiff's cross-motion for summary judgment. Upon consideration thereof, together with the opposition thereto, oral argument of counsel, and the briefs of the parties, it is concluded that plaintiff's claim does not fall within either Section 415 of the original Career Compensation Act of 1949, or Section 415 of the Act as amended, and plaintiff is therefore not entitled to recover and,

IT IS ORDERED that defendant's motion for summary judgment be and the same is granted, plaintiff's cross-motion for summary judgment is denied and plaintiff's petition is dismissed.

By the Court:

WILSON COWEN,
Chief Judge.